No. 892 34

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1291,

Petitioner,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

FRANCIS A. SCANLAN,
KELLY, DEASEY & SCANLAN
926 Four Penn Center Plaza
Philadelphia, Penna. 19103
Counsel for Respondent

PRESS OF ALLEN, LANE & SCOTT, PHILADELPHIA

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OPINION AND ORDERS OF THE COURTS BELOW.

The opinion and orders below are adequately set forth in the Petition with the exception of the Order of the District Court for the Eastern District of Pennsylvania, holding petitioner in contempt and levying a fine as printed in the Petition as Appendix F. This order is not a part of the record in this case. It involves a separate, subsequent matter which was made a separate appeal and is not referred to in the opinion or judgment of the Court

below (App. C and D of petition, pp. 5a-18a). The said order was affirmed by the Court of Appeals for the Third Circuit in a separate opinion and judgment dated November 17, 1966, and a petition for rehearing was denied on January 6, 1967. Therefore, it is respectfully submitted that the said order should not be considered by this Court.

JURISDICTION.

The jurisdictional requisities are adequately set forth in the Petition.

QUESTION PRESENTED.

Did the District Court have jurisdiction under Section 301 of the Labor Management Relations Act, 29 U.S.C.A. 185, to enter an order enforcing an arbitrator's award which the parties agreed was final and binding where the petitioner refused to comply with the award and took the position that it was not bound by the award?

STATUTE INVOLVED.

The Labor Management Relations Act, Section 301, 29 U.S.C.A. 185.

STATEMENT.

This action was simply for the enforcement of an arbitrator's award. It was not an injunction against work stoppages, was never intended to be such an injunction, was found by the Courts below not to be an injunction and cannot be converted into such an injunction by petitioner's semantics.

The essential facts are set forth in the opinion of the Court below (App. C of petition, pp. 5a-17a). A dispute arose between the parties on April 26, 1965, involving an interpretation of a section of their collective bargaining agreement. This dispute was "correctly" referred to the impartial arbitrator under the labor contract (6a). The

arbitrator held three hearings. At the first hearing it was agreed, as required by the labor agreement, that the arbitrator's decision was to be "final and binding" (6a). On June 11, 1965, the arbitrator in "a thorough, well reasoned decision" ruled in favor of respondent (7a).

On July 30, 1965, petitioner refused to acquiesce to the arbitrator's award and announced that it was not going to abide by it (8a). On August 2, 1965, respondent filed a complaint in the District Court under Section 301 of the Labor Management Relations Act (29 U.S.C.A. 185) for "an order enforcing the Arbitrator's Award" (9a). At the hearing on August 3, 1965, counsel for petitioner stated to the Court on several occasions that "the union would live up to the arbitrator's award" (10a). The hearing was then continued with the Court retaining jurisdiction (10a).

On September 13, 1965 in spite of the assurance given to the Court, petitioner again refused to comply with the arbitrator's award. A hearing was held on September 15, 1965 at which time it was uncontradicted that petitioner had violated the arbitrator's award (11a). The Court entered an order providing that the arbitrator's award "be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said Award" (App. B of petition, p. 4a).

The Court of Appeals affirmed the order of the District Court (App. C and D of petition, pp. 5a-18a).

ARGUMENT.

The Decision Below is Clearly Correct.

After a searching examination of the entire record, the Court below concluded that: "The order of the trial Judge directing specific performance of the arbitrator's award was called for by the facts and law of the problem involved" (17a).

The Court below considered and properly disposed of petitioner's arguments as set forth in its petition. With respect to petitioner's first contention that the District Court's order was an injunction in violation of the Norris-LaGuardia Act and the decision of this Court in Sinclair Refining Co. *v.* Atkinson, 370 U.S. 195, the Court below said:

> "Appellant argues that this is an injunction proceeding prohibited by the Norris-LaGuardia Act. It relies completely upon Sinclair Refining Co. *v.* Atkinson, 370 U.S. 195 (1962). That suit concerned an injunction to end the particular strikes involved and work stoppages on nine occasions over a period of almost two years. It categorically holds pp. 213 and 214:
>
> > 'The plain fact is that § 301, as passed by Congress, presents no conflict at all with the anti-injunction provisions of the Norris-LaGuardia Act. Obedience to the congressional commands of the Norris-LaGuardia Act does not directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it does not impair the right of an employer to obtain an order compelling arbitration of any dispute that may have been made arbitrable by the provisions of an effective collective bargaining agreement.'
>
> In that decision the Supreme Court, p. 212, approved of its opinion in *Textile Workers Union* v. *Lincoln Mills,* 353 U. S. 448 (1957) which held pp. 458-459:
>
> > 'The Congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of Section 7 of the Norris-LaGuardia Act.'
>
> In 1960 in the case of *Steelworkers* v. *Enterprise Corp.,* 363 U. S. 593, the Supreme Court again ruled

that the District Courts, as here, have jurisdiction under Section 301 of the Labor Management Act to order compliance with Arbitration Awards. . ." (12a-13a)

In summary of this jurisdictional point, the Court below said:

"Under the facts and the law, the holding of the District Court that it had the jurisdiction to enforce the crystal clear judgment of the Arbitrator was sound and right. It was not in conflict with the Norris-LaGuardia Act but completely within the Lincoln Mills and Steelworkers opinions, supra, and a vital part of the all important enforcement of the specific performance of the admittedly agreed to arbitration clause in the labor contract before us." (14a)

As mentioned above, petitioner's references to a dispute between the parties which arose February 24, 1966 and all events subsequent thereto including an order of the District Court holding petitioner in contempt and levying a fine (App. F of petition, pp. 20a-21a) are not a part of the record in this case. These events were the subject matter of a separate appeal before the Court of Appeals for the Third Circuit on the question as to whether petitioner was properly held in contempt of Court for violating the order of the District Court. Consequently, it is respectfully submitted that all references in Petitioner's petition to matters which are not contained in the record in this case, should not be considered by this Court.

Petitioner's final contention that the decision of the Court below was in violation of the F.R.C.P. 52(a) and 65(d) is equally without merit. The Court below properly and adequately disposed of this contention in its opinion (14a-16a).

Respondent respectfully submits that an examination of the record in this case will show that the decision of

the Court below was clearly correct, and that there is no conflict of decision with this Court. There is no asserted conflict of decision with any other Court of Appeals. Manifestly, there is no important question of Federal law requiring decision by this Court.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANCIS A. SCANLAN,
KELLY, DEASEY & SCANLAN
Counsel for Respondent

January, 1967